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August 2, 1995

Mr. --- G---
Manager
--- --- --- LLP
--- --- --- Center
Suite XXXX
---, CA XXXXX-XXXX

Re: Unidentified Taxpayer

Dear Mr. G---:

I am writing in response to your letter dated June 7, 1995. Your letter indicates that it is a request for written advice. However, I note that you do not identify your client, and this opinion, therefore, does not come within the provisions of Revenue and Taxation Code section 6596.

You request clarification of what you believe to be conflicting information contained in California Sales and Use Tax Annotations 570.0430 and 570.0640, both of which concern the application of California use tax to vehicles purchased outside of California, and used at least partly in interstate commerce.

There are four tests applied to determine whether California use tax applies to the use of a vehicle purchased outside of California. The four tests are described in annotation 570.0430. (BTLG Annot. 570.0430 (1/7/74; 3/23/84; 1/28/91).)

The first test is whether the vehicle is first used in California without any prior functional use outside of California. If the first functional use of a vehicle is in California, it is presumed that the vehicle was purchased for use in California, and the use tax applies.

If it is determined that the first functional use of a vehicle was outside California, the second test of the annotation is applied. That test is whether the vehicle was brought into California within 90 days of the date of purchase. If the vehicle was brought into California within 90 days of purchase, it is presumed that the vehicle was purchased for use in California, and the use tax applies unless tests 3 and 4 call for a different result.

The third test is whether, assuming the vehicle is first functionally used outside California and is brought into California within 90 days from the date of purchase, the vehicle is used principally within California. There is a six-month test period after the vehicle first enters California for determining whether the vehicle was used principally (over one-half the time) in this state. If the vehicle is used over one-half the time of the test period in this state, it is presumed to have been purchased for use in California, and use tax applies unless test 4 calls for a different result.

The fourth test is whether, assuming the vehicle is first functionally used in interstate commerce outside of California and enters California in the course of that use, the vehicle is used continuously in interstate commerce both within and without California and not exclusively in California. If this is so, the use tax does not apply. The test period used to measure continuous use in interstate commerce is a six-month period after the vehicle first enters California. Under the test, the vehicle is considered used in interstate commerce as long as any part of its cargo is interstate in nature, even though part of the cargo on any given trip may be intrastate in nature. It is as to this fourth test that you believe there is a conflict between the two annotations.

Annotation 570.0640 reads:

"Vehicles which haul substantially wholly intrastate shipments over routes for which a firm holds Interstate Commerce Commission operating rights are subject to use tax. The character of the cargo determines the classification of the hauling operation rather than the operating rights. The fact that the various vehicles in question originally were licensed only in this state further supports the conclusion that the vehicles were purchased for use in this state." (BTLG 570.0640 (1/7/64.)) (Emphasis added.)

This annotation is an application of the fourth test contained in annotation 570.0430. In other words, a vehicle is not subject to California use tax when it is purchased outside of California, is first functionally used outside of California in interstate commerce, enters California in the course of such use, and is thereafter continuously used in interstate commerce both within and without California during the course of a six-month test period. You believe that the underlined portion of annotation 570.0640 may conflict with annotation 570.0430. However, what the underlined portion of annotation 570.0640 essentially says is that when most of the loads which a vehicle hauls are entirely intrastate loads, the vehicle is subject to use tax. (In other words, every load does not contain an interstate portion as part of its cargo; most loads are wholly intrastate in content.) The next sentence in the annotation clarifies that it is the character of the cargo, i.e., whether the cargo is wholly intrastate or whether part or all of it is interstate, which determines whether the vehicle carrying it is regarded as used in interstate commerce. Whether the vehicle has the right to operate on interstate routes under authorization of the Interstate Commerce Commission is not a determining factor.

The backup opinion letter to annotation 570.0640 supports this interpretation. That opinion letter responded to a taxpayer who asserted that if a vehicle was used even occasionally to haul an interstate package, and entirely within the borders of one state, the vehicle was used continuously in interstate commerce. Some of the hauls made by that taxpayer's vehicles were wholly intrastate and others carried mixed shipments of intrastate and interstate commerce. The opinion letter discussed what constituted continuous use in interstate commerce. It concluded that if there is some wholly intrastate event or haul during the test period, a taxable use of the vehicle has occurred since the vehicle has not been used continuously in interstate commerce.

I hope this information is of assistance to you. Please write again if we may answer any further questions.

Sincerely,

Sharon Jarvis
Staff Counsel

SJ:es